

United States Bankruptcy Court
Northern District of California

10-14154

In re **Douglas Duell**

Debtor(s)

Case No.

Chapter

13

CHAPTER 13 PLAN

1. PAYMENTS

The Debtor or Debtors (hereinafter called "Debtor") submit to the Chapter 13 Trustee all projected disposable income to be received within the applicable commitment period of the Chapter 13 Plan (hereinafter called "Plan"). The total number of payments shall be 36, and in the amount of \$ 124.00. The pre-confirmation Plan payments to the Trustee must begin 30 days from the date of the filing of the Plan or the Order of Relief, whichever is earlier. The post-confirmation Plan payments to the Trustee will commence on the 20th of the first month after the Plan is confirmed. Upon post-confirmation dismissal of this Plan, all funds held by the Trustee shall be disbursed to Administrative Costs and Creditors.

Debtor elects a voluntary wage order _____

2. PRE-CONFIRMATION ADEQUATE PROTECTION PAYMENTS

The following pre-confirmation adequate protection payments on claims secured by personal property shall be paid by the Trustee to the below listed creditors. The Debtor proposing pre-confirmation payments will commence these payments to the Trustee within 30 days of the date this Plan was filed or the Order of Relief, whichever is earlier. Creditors must file a proof of claim to receive payment from the Trustee. Payments by the Trustee should commence to these Creditors within 30 days of the filing of the proof of claim. Upon a pre-confirmation dismissal, all adequate protection order payments held by the Trustee shall be disbursed to Creditors.

Name of Creditor	Collateral Description	Monthly Payment
-NONE-		

3. ADMINISTRATIVE COSTS

Trustee shall receive a percentage of each plan payment, whether made before or after confirmation, as established by the United States Trustee.

Chapter 13 Attorney fees may be included in a Chapter 13 Plan. Fees and costs requested for allowance are as follows:

Total Fees & Costs Requested	Fees & Costs Received	Balance of Fees & Costs Due	Monthly Payment
\$2,388.00	\$2,388.00	\$4,000.00	\$111.11

Fees and costs allowed shall be paid at a fixed monthly rate and will accrue concurrently with pre-confirmation adequate protection payments listed in Section 2 above and will be paid with Secured Debt as listed in Section 4A below. Upon a pre-confirmation dismissal, all accrued pre-confirmation attorney fees and costs payments held by the Trustee shall be disbursed to the attorney.

4. SECURED DEBT

Interest shall accrue on all secured claims from the date the petition is filed. Interest will be calculated at 10% per annum unless the Debtor specifies otherwise in this Plan. Secured Creditors will retain their liens until their allowed secured claims have been paid.

A) **Post-Confirmation Payments to Creditors Secured by Personal Property**

10-14154

The Debtor seeks a determination that the value of the collateral is as set forth below. Failure to object to this listed amount shown may result in the Creditor's secured claim being limited to the collateral value amount listed.

Creditors will, at minimum, be paid the amount reflected as the monthly payment. The Debtor's omission of any secured creditor does not affect the rights of the omitted creditor to file claims and be paid.

With respect to a debt for which the Debtor has written "Yes" in the column "Surrender" and where the Creditor files a written objection to the treatment provided such debt, Debtor surrenders all interest in the collateral, and the debt shall be treated under Section 4B below.

Name of Creditor	Collateral Description	Collateral Value	Secured Debt Amount	Interest Rate	Monthly Payment	Surrender Yes/No
-NONE-						

B) **Surrender of Property**

The Debtor surrenders any interest in the following collateral. The Debtor waives the protection of the automatic stay and allows the affected Creditor to obtain possession and dispose of its collateral, without further Order of the Court. Any secured claim filed by the below Creditors will be deemed satisfied in full through surrender of the collateral. Any unsecured deficiency claim must be filed by the bar date for unsecured debts.

Name of Creditor	Collateral to be surrendered
-NONE-	

C) **Post Petition Payments on Real Property Debt Paid by Debtor**

Name of Creditor	Property Address	Monthly Payment Amount
1. Bank Of America	Petitioner's residence Location: 16744 Glenda Dr., Guerneville CA 95446	\$1,419.70

D) **Pre-Petition Debt on Real Property**

The Trustee shall pay defaulted real property debt. This prorata payment for defaulted real property debts will begin after payment in full of the Attorney fees and costs listed in section 3 above.

Name of Creditor	Property Address	Defaulted Debt	Interest Rate
-NONE-			

10-14154

5. **EXECUTORY CONTRACTS/LEASES**

- A) The Debtor assumes the executory contract(s)/lease(s) referenced below and provides for the regular contract/lease payment(s), both pre-confirmation and post-confirmation, to be paid directly by the Debtor. Any pre-petition lease arrearage will be paid through this Plan after payment of arrearages listed in 4D above.

Name of Creditor/Lessor	Property Address	Lease Arrearages as of Date of Filing	Arrearage Payment by Trustee	Regular # of Lease Payments Remaining as of Date of Filing	Lease Payment by Debtor
-NONE-					

- B) The Debtor rejects the following executory contract/lease and surrenders any interest in property securing these executory contracts/leases. The Debtor waives the protection of the automatic stay and allows the affected Creditor to obtain possession and dispose of its collateral, without further Order of the Court. Any unsecured claim resulting from the rejection must be filed by the bar date for unsecured debts:

Name of Creditor/Lessor	Identity of Executory Contract/Lease & Property Subject to Executory Contract/Lease
-NONE-	

6. **PRIORITY CLAIMS**

Trustee shall pay all allowed filed priority claims and will pay the claims listed in 6B below, prior to paying those unsecured priority claims listed in sections 6C, 6D, and 6E below. Those claims listed in sections 6C, 6D and 6E below will be paid prorata.

A) **Post Petition Domestic Support Obligations:**

- 1) X None.
- 2) The name(s), and address(es) of the holder of ANY domestic support obligation.

Name	Address

- 3) The Debtor will pay all post-petition domestic support obligations directly to the holder of the claim and not through the Chapter 13 plan.

B) Pre-Petition Arrearages owed to Domestic Support Obligation Creditors:

10-14154

- 1) X None.
- 2) Name of holder of Domestic Support Obligation Arrearage Claim, arrears and monthly payment.

Name of Holder	Arrearage	Monthly Payment
----------------	-----------	-----------------

C) Pre-Petition Domestic Support Obligations assigned to or owed to a governmental unit:

- 1) X None.
- 2) Name of Governmental Creditor, address and amount due:

Name of Governmental Creditor	Address	Amount Due
-------------------------------	---------	------------

D) Priority Tax Claims:

Name of Creditor	Address	Amount Due
-NONE-		

E) Other Priority Claims:

Name of Creditor	Address	Amount Due
-NONE-		

7. UNSECURED DEBTS TO BE PAID WITH INTEREST

- A) The following debts shall be paid in full with interest from petition date.

Name of Creditor	Address	Amount Due	Interest Rate
-NONE-			

8. OTHER UNSECURED DEBTS

Allowed unsecured claims shall be paid from funds remaining, after payment of the debts described (whether or not paid in full with interest) in Sections 2 through 6 above. The amounts to be paid under this Section 8 are estimated to be 0 % percent of allowed claims. (Prorata Plan)

9. Trustee is to be provided, thru the commitment period of the Plan, with Debtors future Federal Tax Returns, beginning with the Current (2010) tax year, by May 15th of the year following the year of the return. Trustee may request and Debtor must supply current income and expense information, on required Trustee forms, for each of the years that the tax returns are provided.

10. Property of the estate includes all of the property specified in 11 U.S.C. Section 541 and all property of the kind specified in such section acquired by the debtor(s) after commencement of the case but before the case is closed, dismissed or likewise converted to one under another chapter of the Code. All property of the debtor remains vested in the estate until completion of the plan.

- 11.0 Confirmation of the plan shall impose a duty on Real Property Creditors and/or servicers of such Creditors, with respect to application of mortgage and mortgage-related payments, to comply with the provisions of 11 U.S.C. §524(l). As a result, all Real Property Creditors and/or servicers for such Creditors shall have an affirmative duty to do the following upon confirmation of the Plan:

- A. To apply all post-petition payments received from the Chapter 13 Trustee and designated to the pre-petition arrearage claim and the administrative arrearage claim only to such claims;

- B. To apply all post-petition payments received directly from the Debtor only to post-petition payments unless otherwise ordered by the Court; 10-14154
- C. To refrain from assessing or adding any additional fees or charges to the loan obligation of the Debtor based solely on the pre-petition default;
- D. To refrain from assessing or adding any additional fees or charges to the loan obligation of the Debtor (including additional interest, escrow and taxes) unless notice of such fees and charges has been timely filed and a proof of claim has been filed and has not been disallowed upon objection of the Chapter 13 Trustee or the Debtor;
- E. To the extent that any post-confirmation fees or charges are allowed and are added to the Plan, to apply only payments received from the Chapter 13 Trustee and designated in payment of such fees and charges to such fees and charges.
- F. To the extent that any post-confirmation fees or charges are allowed and are NOT added to the Plan, to apply only payments received directly from the Debtor and designated in payment of such fees and charges to such fees and charges.

11.1 All contractual provisions regarding arbitration or alternative dispute resolution are rejected in connection with the administration of this Chapter 13 case.

12.0 **Bank of America 2nd mortgage— Debtor(s) intend to avoid lien**

The debtor(s) further proposes pursuant to 11USC Section 1322(b): Notice is hereby provided that the debtor(s) shall reserve the right to effect and administer a motion and/or an adversary proceeding which will determine the value of the debtor's residence 16744 Glenda Dr, Guerneville, CA 95446 pursuant to subsections (a) and (d) of 11USC 506 and Federal Rule of Bankruptcy Procedure 3012. The debtor(s) shall strip down and otherwise provide for **Bank of America** 2nd mortgage, currently holding a recorded second deed of trust on title to the debtor's residence, as an UNSECURED CREDITOR. The debtor(s) WILL request the Court to value the debtor's residence. The debtor shall further request that the Court determine whether the amount of **Bank of America** 2nd mortgage secured claim exceeds the value of its security less the claims of creditors holding senior lien. This determination shall supercede any greater secured claim demanded in a proof of claim FILED by said creditor. The debtor(s) shall reserve the right to file any objection as may be necessary subsequent to said creditor's filing its claim. The debtor believes that the current market value of the debtor's residence does not have equity sufficient for said creditor's junior lien to attach to the residence in full or in part. The fair market value of the residence amounts to the sum of \$176,000. The balance due the senior lien holder of record, Bank of America 1st mortgage amounts to the sum of \$217,181.82. Upon payment if any to **Bank of America** 2nd mortgage, as provided for herein, after hearing or judgment in an Adversary Proceeding on the matter as to the value of the debtor's residence and after the claim has been reduced to judgment or order of the Court in favor of the requested relief, **Bank of America** 2nd mortgage shall unconditionally reconvey its security interest to the debtor(s) and to their spouse and releasing any security interest said creditor may have in and or to the debtors' interests in the real property commonly described as 16744 Glenda Dr, Guerneville, CA 95446

Dated: **October 21, 2010**

/s/ Douglas Duell

Douglas Duell

(Debtor)

(Debtor)